

IN THE COURT OF APPEALS OF TENNESSEE  
WESTERN SECTION AT NASHVILLE

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**JERRY THOMAS RICKS,**

Petitioner-Appellant,

Vs.

Davidson Chancery No. 95-3489-III  
C.A. No. 01A01-9608-CH-00371

**TENNESSEE DEPARTMENT OF  
CORRECTION,**

Respondent-Appellee.

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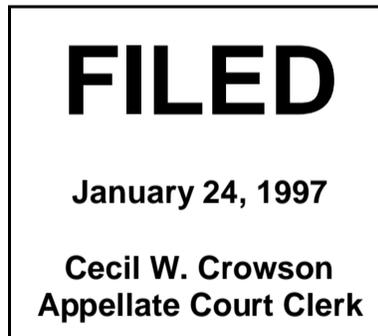
FROM THE CHANCERY COURT OF DAVIDSON COUNTY  
THE HONORABLE ROBERT S. BRANDT, CHANCELLOR

Jerry Thomas Ricks, Pro Se

Charles W. Burson, Attorney General and Reporter  
Patricia C. Kussman, Assistant Attorney General  
For Appellee

***REVERSED AND REMANDED***

Opinion filed:



**W. FRANK CRAWFORD,  
PRESIDING JUDGE, W.S.**

**CONCUR:**

**ALAN E. HIGHERS, JUDGE**

**DAVID R. FARMER, JUDGE**

This is an appeal by petitioner, Jerry Thomas Ricks, from the trial court's order dismissing his petition for declaratory judgment. On November 3, 1995, petitioner filed a complaint for declaratory judgment alleging that he had filed a petition for declaratory order with

the Tennessee Department of Correction on August 28, 1995, and that no response had been made by the Department. He alleges that the Department failed to calculate his sentence expiration date correctly, and that he has not received credit for the years served nor for the years he was on parole from March 1983, to February 1992. Petitioner seeks a judgment that correctly calculates his sentence.

Respondent, Tennessee Department of Correction, filed a motion to dismiss pursuant to Tenn.R.Civ.P. 12.02 (6) on the ground that the petition fails to state a claim upon which relief can be granted. The motion to dismiss was supported by an affidavit of Faye Claud, manager of the Tennessee Department of Correction Sentence Information Services. The affidavit generally states that the Department made the calculations based upon a determinate sentencing law in effect at the time petitioner was convicted and further asserts that “[a]ll street time from March 1, 1983, through March 5, 1992, was granted toward service of the sentence, i.e., no time lost while on parole.” However, the affidavit does not set out the applicable law establishing the criteria for sentence calculation nor the actual calculation in relation to such criteria. The affidavit for the most part is a conclusory statement that the Department correctly calculated the petitioner’s sentence.

The order of the trial court dismissing the petition states:

The petitioner, an inmate in the custody of the Department of Correction, has filed a suit for declaratory judgment in which he complains about the way his prison sentence has been calculated. The Department has filed a motion to dismiss supported by an affidavit from a Department representative that reflects that the petitioner’s sentence has been correctly calculated. Accordingly, the petitioner’s complaint is dismissed at his costs.

Although petitioner presents three issues for review, we perceive the controlling issue to be whether the trial court erred in dismissing the complaint. It is clear from the trial court’s judgment dismissing the complaint that the trial court considered the affidavit attached to the motion to dismiss. Under the circumstances, therefore, the Department’s motion must be treated as a motion for summary judgment. Tenn.R.Civ.P. 12.02.

A trial court should grant a motion for summary judgment when the movant demonstrates that there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law. Tenn.R.Civ.P. 56.03. The party moving for summary judgment

bears the burden of demonstrating that no genuine issue of material fact exists. *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993). When a motion for summary judgment is made, the Court must consider the motion in the same manner as a motion for directed verdict made at the close of plaintiff's proof; that is, "the court must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party and discard all countervailing evidence." *Byrd*, 847 S.W.2d at 210-11. The phrase "genuine issue" as stated in Tenn.R.Civ.P. 56.03 refers to genuine, factual issues and does not include issues involving legal conclusions to be drawn from the facts. *Id.* at 211 (citing *Price v. Mercury Supply Co.*, 682 S.W.2d 924, 929 (Tenn. App. 1984)).

Petitioner's complaint in the chancery court was filed pursuant to the provisions of T.C.A. § 4-5-224 (1991) which provides:

**4-5-224. Declaratory judgments.** - (a) The legal validity or applicability of a statute, rule or order of an agency to specified circumstances may be determined in a suit for a declaratory judgment in the chancery court of Davidson County, unless otherwise specifically provided by statute, if the court finds that the statute, rule or order, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the complainant. The agency shall be made a party to the suit.

(b) A declaratory judgment shall not be rendered concerning the validity or applicability of a statute, rule or order unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue a declaratory order.

(c) In passing on the legal validity of a rule or order, the court shall declare the rule or order invalid only if it finds that it violates constitutional provisions, exceeds the statutory authority of the agency, was adopted without compliance with the rule making procedures provided for in this chapter or otherwise violates state or federal law.

The complaint avers that petitioner sought a declaratory order from the Department as provided for in T.C.A. § 4-5-223, but that he received no response to his petition. The record before this Court supports that allegation. Accordingly, petitioner had standing to file a declaratory judgment suit to determine the applicability of the sentencing statutes and the rules of the Department. *See* T.C.A. § 4-5-223.

Although the trial court stated in the judgment that the affidavit reflects a correct calculation of petitioner's sentence, we fail to see that the affidavit actually does so. Conclusory

statements do not show the actual calculation in accordance with the applicable law. The petition for declaratory judgment asserts that there was an incorrect calculation by the Department and states a cause of action under T.C.A. § 4-5-224. At the very least, uncertainty exists as to whether there is a correct calculation of the sentence, and under such circumstances the motion for summary judgment should have been denied. *See Evco Corp. v. Ross*, 528 S.W.2d 20, 24-25 (Tenn. 1975). Moreover, since petitioner is entitled to file a declaratory judgment action, and his complaint states a cause of action, the trial court should make the required declaration concerning the calculation of petitioner's sentence.

Accordingly, the judgment of the trial court is reversed, and this case is remanded to the trial court for such further proceedings as necessary. Costs of the appeal are assessed against the respondent.

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**W. FRANK CRAWFORD,  
PRESIDING JUDGE, W.S.**

**CONCUR:**

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**ALAN E. HIGHERS, JUDGE**

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**DAVID R. FARMER, JUDGE**